

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANTHONY LAMONT JORDAN,

Defendant-Appellee.

---

UNPUBLISHED

January 10, 2008

No. 274149

Oakland Circuit Court

LC No. 2006-085502-AR

Before: Fitzgerald, P.J., and Markey and Smolenski, JJ.

PER CURIAM.

The prosecutor appeals by leave granted from a circuit court order affirming a district court order granting defendant's motion to dismiss for lack of a speedy trial. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Whether a defendant was denied his constitutional right to a speedy trial is a mixed question of law and fact. This Court reviews the trial court's factual findings for clear error and reviews constitutional questions of law de novo. *People v Gilmore*, 222 Mich App 442, 459; 564 NW2d 158 (1997). A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

A criminal defendant has a right to a speedy trial. *People v Mackle*, 241 Mich App 583, 602; 617 NW2d 339 (2000). Whether a defendant has been denied his right to a speedy trial involves consideration of four factors: (1) the length of the delay, (2) the reasons for the delay, (3) defendant's assertion of the right, and (4) prejudice to the defendant. *People v Cain*, 238 Mich App 95, 112; 605 NW2d 28 (1999). If the delay is less than 18 months, the burden is on the defendant to prove that he was prejudiced by the delay. A delay of 18 months or more is presumptively prejudicial and the burden is on the prosecutor to rebut the presumption. *Id.*

A delay of six months is necessary to trigger an investigation into a claim that a defendant has been denied a speedy trial. *People v Daniel*, 207 Mich App 47, 51; 523 NW2d 830 (1994). The delay period commences at the arrest of the defendant. *People v Cleveland Williams*, 475 Mich 245, 261; 716 NW2d 208 (2006). Defendant was arrested on December 20, 2003, and was scheduled to be tried on July 20, 2006. That is a delay of 31 months, which implicates the speedy trial right. However, defendant expressly waived his right to a speedy trial until his interlocutory appeal was resolved. The application for leave to appeal was denied on

September 29, 2004. Between September 29, 2004, and July 20, 2006, there was a delay of not quite 22 months, which is still sufficient to implicate the speedy trial right.

In assessing the reasons for the delay, each period of delay is examined and attributed to the prosecutor or the defendant. *People v Ross*, 145 Mich App 483, 491; 378 NW2d 517 (1985). Unexplained delays are attributed to the prosecutor. *Id.* Scheduling delays and delays caused by the court system are also attributed to the prosecutor, but should be given a neutral tint and only minimal weight. *Gilmore, supra* at 460. Delays caused by the adjudication of defense motions are attributable to the defendant. *Id.* at 461.

The trial court determined that the reason for the delay was that it had not received a copy of the order resolving defendant's circuit court appeal. That delay is attributable to the court and thus to the prosecution. But being due to negligence, the delay is given less weight than deliberate delay. *Barker v Wingo*, 407 US 514, 531; 92 S Ct 2182; 33 L Ed 2d 101 (1972).

The trial court did not err in finding that defendant promptly asserted his right to a speedy trial. In fact, he demanded a speedy trial before the case was even filed. However, the trial court erred in failing to consider that defendant subsequently expressly waived his speedy trial right in order to pursue an interlocutory appeal. After that appeal was resolved, defendant waited nearly 22 months, until the day of trial, to reassert his right. The failure to assert the right in a timely manner weighs heavily against a finding that the right has been violated. *Williams, supra* at 263.

The right to a speedy trial protects "three interests of the defendant: (1) prevention of oppressive pretrial incarceration; (2) minimization of anxiety and concern of the accused; (3) limitation of the possibility that the defense will be impaired." *People v White*, 54 Mich App 342, 351; 220 NW2d 789 (1974). "In considering the prejudice to the defendant, the most serious inquiry is whether the delay has impaired the defendant's defense." *People v Simpson*, 207 Mich App 560, 564; 526 NW2d 33 (1994). Prejudice to the defense must meaningfully impair a defendant's ability to defend against the charges against him in such a manner that the outcome of the proceeding will likely be affected. *People v Adams*, 232 Mich App 128, 134-135; 591 NW2d 44 (1998).

The trial court clearly erred in finding that defendant was prejudiced by the delay. Although nearly 22 months elapsed between the conclusion of the appeal and the trial date, "[t]he length of the delay is insufficient in and of itself to require dismissal." *Simpson, supra* at 564. The trial court properly found that defendant was not subject to oppressive pretrial incarceration, given that he was out on bond, and further, the defense had not been impaired, given that the witnesses were still available and that no evidence had been lost as a result of the delay. Defendant was certainly subject to anxiety and concern due to the pending charges, but that alone is insufficient to establish prejudice and a violation of the speedy trial right. *Gilmore, supra* at 462. Defendant was also subject to minor inconvenience due to reasonable conditions for release on bond.

Analysis of the four factors shows that there was a delay attributable to the prosecution coupled with defendant's failure to reassert his right after waiving it. Although the delay was lengthy, there was minimal prejudice to defendant's person and no prejudice to his defense.

Under the circumstances, the trial court erred in finding that defendant's right to a speedy trial was violated and the circuit court erred in affirming that decision.

Reversed and remanded for reinstatement of the charges. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Michael R. Smolenski